



March 30, 2001

Mr. Craig H. Smith
Deputy General Counsel
Texas Workers' Compensation Commission
4000 South IH-35
Austin, Texas 78704

OR2001-1274

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145469.

The Texas Workers' Compensation Commission (the "commission") received a request for "all of the decisions of the State Office of Administrative Hearings on Texas workers' compensation matters that relate to the area or areas of Compliance and Practices, Medical Dispute Resolution and/or Hazardous Employer Designations that have been rendered from September 1, 1991 to this date." You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code, in conjunction with sections 402.083 and section 301.081 of the Labor Code. We have considered the exception you claim and reviewed the submitted information.¹

Initially, you inform us that there are no responsive documents for decisions rendered prior to 1992, but that the commission maintains hard copies of decisions from 1992 to the present, and that in June, 1999, the commission began inputting decisions of the State Office of Administrative Hearings ("SOAH") on an imaging system that can be converted into a text document, but that such documents are hard to read. Chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within chapter 552's purview if it does not

¹We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

exist when governmental body receives a request for it). Nor is a governmental body required to prepare new information to respond to a request for information. Open Records Decision No. 605 (1992), 572 (1990), 416 (1984). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990) at 8. If the commission holds information from which the requested information can be obtained, it must provide that information to the requestor unless it is otherwise excepted from disclosure.

We next address your raised exception to disclosure. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 402.083 of the Labor Code provides that "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle." You seek our opinion as to whether an injured employee's name, date of injury, commission claim number, social security number, home telephone number, home address, date of birth and employer's name contained within the responsive SOAH decisions are confidential under section 402.083. You also ask whether the names of the injured employee's relatives would also be excepted under that statute. This office has interpreted section 402.083 to protect only that "information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims." Open Records Decision No. 619 at 10 (1993). In that ruling, we concluded

[i]n particular, the 71st Legislature's rejection during its first and second called sessions of language broadening two of the four confidentiality provisions to protect persons other than employees and their beneficiaries indicates the legislature did not intend to protect the identities of employers alleged to have violated the act unless disclosure of that information would implicitly disclose the identities of employee claimants. Thus, we construe the phrase "regarding the employee" (now codified at section 402.083, Labor Code), narrowly to limit its protection only to information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims. Whether specific information implicitly discloses the identity of a particular employee must be determined on a case-by-case basis. . . . [Y]ou must withhold the portions of the documents that *explicitly* disclose the identities of the claimants, *i.e.*, the claimants' names, spouses' names, social security numbers, and home telephone numbers and addresses, pursuant to section 552.101 of the [Public Information Act] in conjunction with section 402.083(a). [Footnote omitted]. You must also withhold the portions of the documents that *implicitly* disclose the claimants' identities. We believe this would include the birthdate of the claimant. Given that the documents relate to alleged violations by an employer with a large work force, we conclude that the release of the identity

of the employer and the nature and date of the alleged violations will not, in this case, implicitly disclose the identities of the claimants. [Italics in original].

Id. You have highlighted the information in the submitted SOAH decisions contained in attachments B, C and D you believe is excepted from disclosure under section 402.083. Upon review of that information, we conclude that all of the information you seek to withhold either implicitly or explicitly discloses the identity of claimants, with the exception of the employer's name in certain cases. Information revealing the date of injury, as well as an injured employee's name, commission claim number, social security number, home telephone number, home address, date of birth, and names of family members, we believe implicitly or explicitly identifies claimants and is therefore excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code. With regard to the identity of the employer, given the large volume of information responsive to the request and the submission of only a representative sample of documents, we are unable to determine whether release of the identity of the employer of a claimant would implicitly identify the claimant every case. Therefore, we conclude that only in those cases where release of an employer's identity would reveal a claimant's identity may the identity of an employer be withheld.

With regard to attachment D, you assert that the Standard Industrial Classification ("SIC") Code, along with the explanation of the code number, is confidential under section 301.081 of the Labor Code, in conjunction with section 552.101 of the Government Code. Section 301.081 provides in relevant part as follows:

- (a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.
- (b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.
- (c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title.

In Open Records Decision No. 599 (1992), this office interpreted the predecessor to section 301.081(c) to apply to information the commission obtained from the employers'

records and from the reports that employers are required to file with the commission. In that ruling we specifically found that the SIC codes are confidential, stating:

the SIC code number is based on information provided by the employing unit on the initial Status Report, Form C-1. The C-1 form contains a list of ninety-nine short titles of business descriptions with corresponding code numbers of 01 through 99. In completing this form, an employer is required to select the title which most closely describes his or her business and enter the appropriate code number in the space provided. That number is then used by [the Texas Employment Commission] to assign a beginning tax rate for new employers and to calculate the new tax rate for a given industry. Since a SIC code number is chosen by an employer to describe the business, it is information provided by the employer and therefore confidential within [the predecessor to section 301.081].

On this basis, we conclude that the SIC codes contained in the information submitted in attachment D are confidential under section 301.081(c), and are thus excepted from disclosure under section 552.101 of the Government Code.

To summarize, the date of injury, as well as an injured employee's name, commission claim number, social security number, home telephone number, home address, date of birth, and names of family members, are excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code, and must be redacted from the information to be released from attachments B, C, and D. In those cases where release of an employer's identity would reveal a claimant's identity, the employer's identity is excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code as well. The SIC codes contained in the information submitted in attachment D are confidential under section 301.081(c), and are thus excepted from disclosure under section 552.101 of the Government Code.² The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

²You also request that we find as a "previous determination" that the types of information at issue in the requested SOAH rulings are excepted from disclosure by section 552.101 of the Government Code. We decline to issue such a ruling at this time.

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 145469

Encl. Submitted documents

cc: Mr. Randy McNeel
5300 Bee Cave Road, Suite 200, Building III
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(w/o enclosures)